

Senate Bill No. 1456

CHAPTER 624

An act to amend Sections 7500.1, 7501.7, 7507.4, 7507.9, 7507.10, 7507.13, 7508.2, and 7508.3 of the Business and Professions Code, relating to reposseors.

[Approved by Governor September 19, 1996. Filed
with Secretary of State September 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1456, Kelley. Repossessors.

Existing law, the Collateral Recovery Act, sets forth a comprehensive scheme for the regulation and licensure of reposseors and repossession agencies.

This bill would delete a prohibition against a licensee collecting claims owed another with specified exception. It would authorize the agency to request written authorization for the release of property not covered by a security interest to someone other than the debtor. It would also make technical and definitional changes, as specified. Certain provisions of the act would be made applicable with respect to "debtors," as defined, rather than registered owners or consumers.

The people of the State of California do enact as follows:

SECTION 1. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Person" includes any individual, partnership, limited liability company, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Security and Investigative Services.

(e) "Chief" means the Chief of the Bureau of Security and Investigative Services.

(f) "Licensee" means an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency.

(g) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(h) “Registrant” means a person registered under this chapter.

(i) “Services” means any duty or labor to be rendered by one person for another.

(j) “Dangerous drugs” means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(k) “Deadly weapon” means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(l) “Combustibles” means any substance or article that is capable of undergoing combustion or catching fire, or that is flammable, if retained.

(m) “Health hazard” means any personal effects which if retained would produce an unsanitary or unhealthful condition.

(n) “Advertisement” means any written or printed communication, including a directory listing, except a free telephone directory listing which does not allow space for a license number.

(o) “Assignment” means an authorization by the legal owner, lienholder, lessor or lessee to skip trace, locate, or repossess or to collect money payment in lieu of repossession of, any collateral, including, but not limited to, collateral registered under the Vehicle Code which is subject to a security agreement that contains a repossession clause. “Assignment” also means an authorization by an employer to recover any collateral entrusted to an employee or former employee if the possessor is wrongfully in possession of the collateral.

(p) “Security agreement” means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. “Security agreement” also includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

(q) “Legal owner” means a person holding a security interest in any collateral which is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement.

(r) “Private building” means and includes any dwelling, outbuilding, or other enclosed structure.

(s) “Secured area” means and includes any fenced and locked area.

(t) “Violent act” means any act which results in bodily harm or injury to any party involved.



(u) “Collateral” means any vehicle, boat, recreational vehicle, motor home, appliance, or other property which is subject to a security agreement.

(v) “Personal effects” means any property contained within repossessed collateral which is not the property of the legal owner.

(w) “Debtor” means any person obligated under a security agreement.

SEC. 2. Section 7501.7 of the Business and Professions Code is amended to read:

7501.7. If, upon investigation, the director determines that a licensee, a qualified certificate holder, or a registrant is in violation of Section 7508.1, 7508.2, 7508.3, 7508.4, 7508.5, or 7508.6, the director may issue a citation to the licensee, qualified certificate holder, or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific references to the provision of law determined to have been violated, and shall be delivered by certified mail to the licensee’s, qualified certificate holder’s, or registrant’s address of record. If the citation is issued to the qualified certificate holder or registrant, a copy of the citation shall also be sent by certified mail to the licensee’s address of record. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain assessment of an administrative fine not to exceed two thousand five hundred dollars (\$2,500).

A citation or fine assessment shall inform the licensee, qualified certificate holder, or registrant that if he or she desires a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the director within 30 days of the issuance of the citation or assessment, as appropriate. Any request for reconsideration received in writing by the director within the 30 days shall stay the 30 days allowed to request a hearing while the director reconsiders the fine assessment. Upon decision, the director shall notify the licensee, qualified certificate holder, or registrant in writing whether the fine assessment has been withdrawn or the fine assessment has been reaffirmed. If the fine assessment has been reaffirmed, the director shall again inform the licensee, qualified certificate holder, or registrant in writing that he or she has 30 days to request a hearing. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If the licensee, qualified certificate holder, or registrant neither requests a hearing nor pays the assessed fine within 30 days of the assessment, the license, qualification certificate, or registration of the person shall not be renewed pursuant to Section 7503.10 and no

registration shall be issued pursuant to Article 7 (commencing with Section 7506) until the assessed fine is paid.

Administrative fines collected pursuant to this section shall be deposited in the Private Security Services Fund.

SEC. 3. Section 7507.4 of the Business and Professions Code is amended to read:

7507.4. A licensed repossession agency or its registrants may make demand for payment in lieu of repossession, if the demand is made pursuant to an assignment for repossession.

In making demand upon a debtor for a money payment in lieu of repossession, the reposessor shall present the demand in compliance with the Robbins-Rosenthal Fair Debt Collection Act (Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code), setting forth in the demand only the amount that was specified by the creditor in the repossession referral and the fees that are properly chargeable. Itemized receipts shall be furnished the debtor at the time payment is received. Payments received shall forthwith be transmitted to the creditor, disclosing the full amount of money received from the debtor in addition to the contract payments.

SEC. 4. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. If personal effects or other personal property, not covered by a security agreement, are contained in or on collateral at the time it is recovered, the effects shall be removed from the collateral subject to the security interest, a complete and accurate inventory shall be made, and the personal effects shall be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession.

(a) The date and time the inventory is made shall be indicated and shall be signed by the repossession agency registrant or employee who performs the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

(1) Deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(2) Combustibles shall be inventoried and noted as “disposed of, dangerous combustible,” and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as “disposed of, health hazard,” and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least 60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee.

(d) The inventory shall include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering the personal effects and an itemization of all personal effect removal and storage charges that will be made by the repossession agency. The inventory shall also include the following statement: “Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED.”

(e) The inventory shall be provided to a debtor not later than 48 hours after the recovery of the collateral, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of the collateral.

(2) The 48-hour period encompasses a Saturday or Sunday and a postal holiday, the inventory shall be provided no later than 96 hours after the recovery of the collateral.

(3) Inventory resulting from repossession of a yacht, motorhome, or travel trailer is such that it shall take at least four hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of the collateral. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of the collateral.

(f) Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor shall be removed from the collateral and inventoried pursuant to this section. If the plates are not claimed by the debtor within 60 days, they shall be effectively destroyed and the licensee shall, within 30 days thereafter, notify the Department of Motor Vehicles of their effective destruction on a form promulgated by the chief which has been approved as to form by the Director of the Department of Motor Vehicles.

(g) The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

(h) The debtor may waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other

personal property not covered by a security interest within the time period for the notices required by this section and signs a statement that he or she has received all the property.

(i) If personal effects or other personal property not covered by a security interest are to be released to someone other than the debtor, the repossession agency may request written authorization to do so from either the debtor or the legal owner.

SEC. 5. Section 7507.10 of the Business and Professions Code is amended to read:

7507.10. Each licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral and not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided not later than 96 hours, after the repossession of collateral, which notice shall include all of the following:

(a) The name, address, and phone number of the representative of the legal owner to be contacted regarding the repossession.

(b) The name, address, and phone number of the representative of the repossession agency to be contacted regarding the repossession.

(c) A statement printed on the notice containing the following: “Repossessioners are regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA 95814. Repossessioners are required to provide you, not later than 48 hours after the recovery of collateral, with an inventory of personal effects or other personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the inventory shall be provided no later than 96 hours after the recovery of collateral.”

(d) A disclosure that “Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and which is caused by the repossession agency is the liability of the repossession agency. A mechanical or tire failure shall not be the responsibility of the repossession agency unless the failure is due to the negligence of the repossession agency.”

(e) If applicable, a disclosure that environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor will be removed from the collateral and inventoried, and that if the plates are not claimed by the debtor within 60 days, they will be destroyed.



The notice may be given by regular mail addressed to the last known address of the consumer or by personal service at the option of the repossession agency.

SEC. 6. Section 7507.13 of the Business and Professions Code is amended to read:

7507.13. (a) A licensed repossession agency is not liable for the act or omission of a legal owner, debtor, lienholder, lessor, or lessee in making an assignment to it or for accepting an assignment from any legal owner, debtor, lienholder, lessor, or lessee and is entitled to indemnity from the legal owner, debtor, lienholder, lessor, or lessee for any loss, damage, cost, or expense, including court costs and attorney's fees, that it may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(b) The legal owner, debtor, lienholder, lessor, or lessee is not liable for any act or omission by a licensed repossession agency in carrying out an assignment and is entitled to indemnity from the repossession agency for any loss, damage, cost, or expense, including court costs and attorney's fees, that the legal owner, debtor, lienholder, lessor, or lessee may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(c) The legal owner, debtor, lienholder, lessor, or lessee is not guilty of a violation of Section 7502.1 or 7502.2 if, at the time of the assignment, the party making the assignment has in its possession a copy of the reposessor's current, unexpired repossession agency license and does not have actual knowledge of any order of suspension or revocation of the license.

(d) Neither a licensed repossession agency nor a legal owner, debtor, lienholder, lessor or lessee may, by any means, direct or indirect, express or implied, instruct or attempt to coerce the other to violate any law, regulation, or rule regarding the recovery of any collateral, including, but not limited to, the provisions of this chapter or Section 9503 of the Commercial Code.

SEC. 7. Section 7508.2 of the Business and Professions Code is amended to read:

7508.2. The director may assess administrative fines for any of the following prohibited acts:

(a) Recovering collateral or making any money demand in lieu thereof, including, but not limited to, collateral registered under the Vehicle Code, which has been sold under a security agreement before a signed or telegraphic authorization has been received from the legal owner, debtor, lienholder, lessor, or repossession agency acting on behalf of the legal owner, debtor, lienholder, or lessor of the collateral. A telephonic assignment is acceptable if the legal owner, debtor, lienholder, lessor, or repossession agency acting on behalf of the legal owner, debtor, lienholder, or lessor is known to the licensee



and a written authorization from the legal owner, debtor, lienholder, lessor, or repossession agency acting on behalf of the legal owner, debtor, lienholder, or lessor is received by the licensee within 10 working days or a request by the licensee for a written authorization from the legal owner, debtor, lienholder, lessor, or repossession agency acting on behalf of the legal owner, debtor, lienholder, or lessor is made in writing within 10 working days. Referrals of assignments from one licensee to another licensee are acceptable. The referral of an assignment shall be made under the same terms and conditions as in the original assignment. The fine shall be twenty-five dollars (\$25) for each of the first five violations and one hundred dollars (\$100) for each violation thereafter, per audit.

(b) Using collateral or personal effects, which have been recovered, for the personal benefit of a licensee, or officer, partner, manager, registrant, or employee of a licensee. The fine shall be twenty-five dollars (\$25) for the first violation and one hundred dollars (\$100) for each violation thereafter. This subdivision does not apply to personal effects disposed of pursuant to subdivision (c) of Section 7507.9.

(c) Selling collateral recovered under the provisions of this chapter, except with written authorization from the legal owner or mortgagee thereof. The fine shall be one hundred dollars (\$100) for the first violation and five hundred dollars (\$500) for each violation thereafter, per audit.

(d) Failing to remit all money due clients within 10 working days after finalization of the sale of collateral. The licensee shall deposit all money received in the form of cash or negotiable instruments made payable to the licensee for money due clients from the sale of collateral which has been repossessed in a trust account within five working days, and the money shall be withdrawn only for remittance to the client and for the payment of amounts due the licensee. The fine shall be two hundred fifty dollars (\$250) for the first violation and one thousand dollars (\$1,000) for each violation thereafter. For purposes of this subdivision, “finalization of sale” means the time when the documents of title or ownership which permit transfer of title from the legal owner to the purchaser are received by the repossession agency.

(e) Failing to remit moneys collected in lieu of repossession or redemption to a client within 10 working days after receipt of the moneys. The fine shall be two hundred fifty dollars (\$250) for the first violation and one thousand dollars (\$1,000) for each violation thereafter.

(f) Failing to deliver to a client any negotiable instrument received by the licensee made payable to the client within 10 working days of receipt of the negotiable instrument. No licensee, manager, registrant, or employee of a licensee shall accept a negotiable instrument made payable to a client unless they have

authorization from the client to accept such a negotiable instrument. The fine shall be two hundred fifty dollars (\$250) for the first violation and one thousand dollars (\$1,000) for each violation thereafter.

(g) Unlawfully entering any private building or secured area without the consent of the owner, or of the person in legal possession thereof, at the time of repossession. The fine shall be five hundred dollars (\$500) for each violation.

(h) Committing unlawful assault or battery on another person. The fine shall be five hundred dollars (\$500) for each violation.

(i) Falsification or alteration of an inventory. The fine shall be twenty-five dollars (\$25) for each violation.

(j) Soliciting from the legal owner the recovery of specific collateral registered under the Vehicle Code or under the motor vehicle licensing laws of other states after the collateral has been seen or located on a public street or on public or private property without divulging the location of the vehicle. The fine shall be one hundred dollars (\$100) for the first violation and two hundred fifty dollars (\$250) for each violation thereafter.

SEC. 8. Section 7508.3 of the Business and Professions Code is amended to read:

7508.3. A licensee, or any of his or her registrants or employees, or a qualified certificate holder, shall be prohibited from using any false or misleading representation during the course of recovery of collateral and may be issued a notice of warning for the first violation; assessed a twenty-five dollar (\$25) fine for the second violation; and assessed a one hundred dollar (\$100) fine for any subsequent violation of any of the following:

(a) The false representation or implication that the individual is vouched for, bonded by, or affiliated with the United States or with any state, county, city, or city and county, including the use of any badge, uniform, or facsimile thereof.

(b) The false representation or implication that any individual is an attorney or that any communication is from any attorney.

(c) The representation or implication by a repossession agency or its registrants or employees that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless the action is lawful and the creditor has instructed the repossession agency to inform the debtor that the creditor intends to take the action.

(d) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(e) The false representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor.

(f) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized,



issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(g) The false representation or implication that documents are legal process.

(h) The use of any business, company, or organization name other than the true name of the repossession agency's business, company, or organization.

(i) The use of any deceptive forms.

